

Chapter 286

MARION COUNTY PUBLIC DEFENDER BOARD AND AGENCY*

*Editor's note—G.O. 9, 1993, § 1, adopted Feb. 22, 1993, amended this chapter in its entirety, in effect repealing the former provisions, §§ 286-1—286-8, relative to the Marion County Public Defender Board and Agency, and enacting similar new provisions in lieu thereof as herein set out. Formerly, such provisions derived from G.O. 25, 1992, § 1.

Sec. 286-1. Agency and board established

This chapter establishes the Marion County Public Defender Agency and the Marion County Public Defender Board for the purpose of providing legal representation to indigent defendants/respondents in criminal, juvenile, probation violation, extradition, child support, civil commitments and other proceedings where the right to counsel has been established by law. (G.O. 9, 1993, § 1)

Sec. 286-2. Definitions.

When used in this chapter, the following words and terms shall be defined as follows:

- (1) *Agency* means the county public defender agency created by this chapter.
- (2) *Board* means the county public defender board created by this chapter.
- (3) *Indigent defendant/respondent* means a person who requests legal representation and is initially determined by the court to be constitutionally entitled to legal representation at public expense.
- (4) *Legal representation* means the services of an attorney provided to a defendant/respondent in a matter originating in a state court in the county involving:
 - a. A person charged with a crime as defined in IC 35-41-1-6;
 - b. An act of delinquency as defined in IC 31-6-4-1;
 - c. A violation of a condition of probation established as a part of a sentence in a juvenile or criminal matter;
 - d. Detention of a person subject to extradition to another jurisdiction;
 - e. Proceedings to collect unpaid child support pursuant to IC 31-2;
 - f. Civil commitment and contempt proceedings; or
 - g. Other proceedings where the right to counsel at public expense has been established by law.

The term includes services in connection with all pretrial and trial proceedings in

which an indigent defendant/respondent has a right to counsel at public expense. (G.O. 9, 1993, § 1)

Sec. 286-3. Public defender board membership and appointment.

(a) The board shall consist of nine (9) members:

- (1) Four (4) members appointed by the city-county council, no more than two (2) of whom shall be members of the same political party.
- (2) Four (4) members appointed by the judiciary as follows:
 - a. Two (2) members appointed by majority vote of the judges of the county superior court, who shall not be members of the same political party; and
 - b. Two (2) members appointed by the presiding judge of the county municipal court, who shall not be members of the same political party.
- (3) One (1) member appointed by the mayor.

(b) The initial term of one (1) member appointed by the city-county council, one (1) member appointed by the criminal division of the county superior court, and one (1) member appointed by the presiding judge of the county municipal court shall expire on December 31, 1993. The initial term of one (1) member appointed by the city-county council, one (1) member appointed by the presiding judge of the county municipal court, and the member appointed by the mayor shall expire on December 31, 1994. The initial term of the other members shall expire on December 31, 1995.

(c) After the initial term of each member as stated in subsection (b) above, appointments shall be for three-year terms. Members of the board shall serve until their successor is duly appointed and qualifies. An appointment to fill a vacancy shall be made by the authority appointing the member vacating the position and shall be for the remainder of the unexpired term. Whenever a vacancy occurs in the office of a board member other than by reason of the expiration of the term of the member, the chairperson of the board shall promptly give written notice to the appointing au-

thority responsible for making the appointments described in subsection (a) of such fact, specifying the name of such former member.

(d) The deputy prosecuting attorneys and law enforcement officers and members of the judiciary are ineligible to serve as members of the board. No member of the board shall be an elected official or employed by an elected official or an appointing agency.

(e) All members of the board must be residents of the county, and if a member ceases to be a resident of the county, he or she shall be considered to have resigned from the board.

(f) Board members shall serve without pay but may receive reimbursement for expenses if approved by the board.

(g) Five (5) members of the board shall constitute a quorum for the purpose of conducting the business of the board. Decisions of the board shall be approved by a majority of the members present. Votes shall be in person only and not by proxy.

(h) The board shall meet at least quarterly or upon call of its chairperson or any three (3) members of the board.

(i) The board shall elect its chairperson and secretary by a majority vote of the board at the first meeting of the board in each calendar year.

(G.O. 9, 1993, § 1; G.O. 161, 1993, § 1)

Sec. 286-4. Powers and duties of the board.

The board shall have the following powers and duties:

(1) To provide competent legal representation for indigent defendants/respondents in criminal, juvenile, probation violation, extradition, child support, civil commitment and other matters pursuant to the plan adopted pursuant to section 286-6.

(2) To establish guidelines and procedures for the determination of legal indigency and for appropriate reimbursement for public defender legal representation.

(3) To establish policies and procedures for the efficient operation of the agency and the achievement of the objective of providing

competent and independent legal representation for indigent defendants/respondents.

(4) To employ a chief public defender subject to annual confirmation, after January 1, 1995, by the city-county council, to serve as the chief administrative officer. Such person shall be an attorney admitted to the practice of law in the State of Indiana and shall have at least two (2) years experience in criminal defense. If the name of the incumbent chief public defender is submitted for reconfirmation, it shall be submitted before January thirtieth of the year for which reconfirmation is sought. If the office is vacant or the incumbent is not proposed for reconfirmation, the replacement shall be submitted within forty-five (45) days of the occurrence of the vacancy or the end of the incumbent's term. The board may appoint an acting chief public defender to act during any vacancy or disability of the incumbent, which appointment shall expire upon the earlier of the confirmation of a successor or ninety (90) days after the appointment of the acting chief public defender.

(5) To authorize the chief public defender to employ or contract with attorneys, investigators, paralegals and clerical employees based on merit as consistent with the budget approved by the city-county council.

(6) To recommend an annual operating budget for the agency and thereafter to monitor expenditures of funds by the agency.

(7) To receive and apply funds from grants, gifts, bequests and payments from persons served to the purposes of the agency.

(8) To prepare and submit to the appointing authorities as described in subsection (a) of section 286-3 of this chapter an annual report on the operation of the agency.

(9) To elect a chairperson and other appropriate officers from the membership of the board.

(G.O. 9, 1993, § 1; G.O. 161, 1993, § 2)

Sec. 286-5. Chief public defender.

(a) The chief public defender shall:

- (1) Be the chief administrator of the agency and devote full time and employment to such position.
- (2) Review a determination of indigency and eligibility for legal representation by the agency staff when requested to do so by a defendant/respondent.
- (3) Maintain offices for the agency as approved by the board.
- (4) Establish within the agency such trial divisions of public defenders to represent indigent defendants/respondents as necessary.
- (5) Hire without consideration of political affiliation, with the approval of the board, staff necessary to perform the services of the agency and supervise and discipline such staff.
- (6) Keep and maintain records of all cases handled by the agency and report at least annually to the board concerning the operation of the agency, its costs and projected needs.
- (7) Ensure adequate, appropriate and consistent assignment of cases to public defenders.
- (8) Provide/establish a method of merit evaluation for public defenders, not less than yearly.

(b) Pending appointment of a chief public defender, the president of the city-county council shall appoint a member of the state bar to serve as interim administrator of the public defender agency. Such interim administrator shall assist in organizing the board and agency.

(G.O. 9, 1993, § 1; G.O. 161, 1993, § 3)

Sec. 286-6. Plan for provision of legal representation.

On or before June 15, 1993, the board shall prepare and submit to the city-county council for approval a comprehensive plan for the provision of legal representation to indigent defendants/respon-

dents in the county. The comprehensive plan shall, at a minimum, provide for:

- (1) Provision of legal representation to an indigent defendant/respondent at the earliest possible point in time.
- (2) The legal representation of an indigent defendant/respondent by the same attorney or attorneys through the pendency of a matter to the greatest extent possible.
- (3) The use of qualified attorneys who will volunteer to provide legal representation to one (1) or more indigent defendants/respondents without charge to the greatest extent possible.
- (4) Professional development, continuing legal education, and malpractice coverage for public defenders.
- (5) Formal or informal agreements with the county prosecutor and law enforcement agencies establishing simplified procedures for expediting discovery and other communications with respect to pending cases, consistent with applicable court rules.
- (6) Utilization of all available sources of governmental and nongovernmental funding including, but not limited to, payment or repayment for services rendered from persons served in accordance with IC 33-9-11.5.
- (7) Periodic reevaluation of the operation of the agency and the accomplishment of its purpose.
- (8) Recommendation of a system for providing appellate counsel which is independent of the control of the chief public defender.

Such plan may be amended by the board with approval of the council.

(G.O. 9, 1993, § 1)

Sec. 286-7. Retention of existing public defenders.

Upon review, the agency shall initially offer employment or a contract for the provision of legal representation to each attorney acting as a public defender in the Marion Municipal Court and the

Marion Superior Court criminal, juvenile and title IV-D divisions. The chief public defender shall not unreasonably change the terms of employment or contract from the same basis as existed prior to the implementation of the agency.
(G.O. 9, 1993, § 1)

Sec. 286-8. Restriction on the law practice of public defenders.

Attorneys employed by the agency on a full-time basis shall have as a condition of their employment or continued employment that they do not provide legal representation for private clients on matters defined in section 286-2(4), if such representation creates a conflict of interest with such attorneys' responsibilities with the agency.
(G.O. 9, 1993, § 1)

Sec. 286-9. Authority of judges.

Nothing contained in this chapter shall be deemed to abridge the authority of any judge of a state court of this county from appointing counsel for any person entitled thereto under the Constitution of the United States or the Constitution of the State of Indiana.
(G.O. 9, 1993, § 1)